IP 05-0119-C T/K Watson v Costco
Judge John D. Tinder Signed on 7/29/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CANDACE WATSON,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:05-cv-00119-JDT-TAB
	)	
COSTCO WHOLESALE CORPORATION,	)	
	)	
Defendant.	)	

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CANDACE WATSON,	)	
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Plaintiff,	)	
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COSTCO WHOLESALE CORPORATION,	)	
	)	
Defendant.	)	

ENTRY ON DEFENDANT'S MOTION TO DISMISS (filed 1/24/05)[1]

This matter is before the court on Defendant's Motion to Dismiss Count I of Plaintiff's Complaint. For the reasons discussed below, the motion is denied.

I. Factual and Procedural Background

On September 1, 2002 Plaintiff, Candace Watson, was injured while working as a cashier for Defendant, Costco Wholesale Corporation ("Costco"). She was re-injured on March 5, 2003, which resulted in her having to take leave until September of 2003. During this time she collected worker's compensation benefits. Because of restrictions placed upon her as a result of her injury, when she returned to work she was unable to perform her duties as a cashier. In an effort to seek accommodation, Watson interviewed for another job with Costco but was denied the position. Watson alleges

[1] This Entry is a matter of public record and will be made available on the court's web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

that when she was denied this other position she was told that Costco does not reward people who are injured at work.

Watson initially brought this lawsuit in the Superior Court for Lake County, Indiana. Costco removed the case to the United States District Court for the Northern District of Indiana on the basis of a federal question being at issue under the Americans with Disabilities Act ("ADA"). Subsequently, venue was transferred to this court.

The first Count of the Complaint alleges that, in retaliation for filing for and receiving worker's compensation benefits, Costco refused to accommodate her physical restrictions by placing her in a position she was qualified for, "thereby essentially terminating her employment." Count II alleges that Costco constructively discharged her by refusing to place her into a position which had requirements consistent with her physical restrictions. Finally, Count III asserts a violation of the ADA for Costco's failure to make reasonable accommodation for her to continue her employment at Costco. Pending before this court is Costco's motion made pursuant to Fed. R. Civ. P. 12(b)(6), seeking to have Count I dismissed for failure to state a claim upon which relief can be granted.

II. Standard

When reviewing a motion to dismiss, the court views the complaint in a light most favorable to the plaintiff. *Lee v. City of Chicago*, 330 F.3d 456, 459 (7th Cir. 2003). This includes accepting as true all well-pleaded allegations and making any reasonable inferences from the allegations in her favor. *Id.* The motion will be granted only if it

appears beyond a reasonable doubt that the plaintiff cannot prove any facts which would support a claim for relief. *Manning v. Miller*, 355 F.3d 1028, 1031 (7th Cir. 2004).

III. Analysis

In Count I, Watson alleges that Costco "essentially" terminated her employment in retaliation for her receiving worker's compensation when it failed to give her the position for which she interviewed when she returned to work with certain physical restrictions. This type of claim, under Indiana common law, is often referred to as a *Frampton* claim, named after the 1973 Indiana Supreme Court case which recognized an employee's cause of action for termination in retaliation for having filed a workers compensation claim. *See Frampton v. Cent. Ind. Gas Co.*, 297 N.E.2d 425 (Ind. 1973). Costco points out that Watson's employment was not terminated and, indeed, Watson admits as much from a technical standpoint when, in Count II, she alleges that she was "constructively discharged" because she had no choice but to remain off work in light of the fact that she had physical restrictions which made it impossible for her to continue in her current position. Costco argues that Count I should be dismissed because Indiana does not recognize a claim for constructive retaliatory discharge and therefore Watson has failed to state a claim upon which relief can be granted.

Indiana has a long tradition of following the employment-at-will doctrine. *Hudson v. Wal-Mart Stores, Inc.,* No. 04-3824, 2005 WL 1433879, __ F.3d __ (7th Cir. June 21, 2005). In *Frampton*, the court created a public policy exception to the employment-at-will doctrine that allows a cause of action for retaliatory discharge when an employee

has been discharged for filing a workers compensation claim. *Frampton*, 297 N.E.2d at 428. This exception was created to protect remediless employees from being retaliated against for exercising a statutorily protected right. *Id.* The public policy exception was later extended to include situations where an employer discharged an employee after the employee refused to break a law. *See McClanahan v. Remington Freight Lines*, 517 N.E.2d 390, 393 (Ind. 1988) (allowing a cause of action for wrongful discharge by an employee-at-will when he was discharged for refusing to commit an act that would have made him personally liable for a violation of Indiana law). However, generally, the courts have been very reluctant to extend this doctrine. *See Groce v. Eli Lilly & Co.,* 193 F.3d 496, 502-503 (7th Cir. 1999); *Wior v. Anchor Industries, Inc.,* 669 N.E.2d 172, 177-178 (Ind. 1996).

In *Knight v. Pillsbury Co.*, 761 F. Supp. 618 (S.D. Ind. 1990), Judge Brooks of this court found the *Frampton* exception inapplicable to a claim of constructive retaliatory discharge. Costco argues that *Knight* precludes Watson's claim of constructive retaliatory discharge. There are a number of reasons why that is not the case. First, federal district court decisions are not binding on other districts or even judges within the same district. *TMF Tool Co. v. Muller*, 913 F.2d 1185, 1191 (7th Cir. 1990); *U.S. v. Articles of Drug Consisting of 203 Paper Bags*, 818 F.2d 569, 572 (7th Cir. 1987). Second, the analysis in *Knight* does not apply to the case at bar. Finally, while this court agrees that any substantial expansion of the *Frampton* exception has been left to the Indiana legislature, the issue at hand is not a true expansion of the exception and Indiana courts would seem to agree.

Judge Brooks' decision in *Knight* not to extend the *Frampton* exception to include the plaintiff's claim of retaliatory constructive discharge was based principally upon the fact that the "plaintiff was covered by a collective bargaining agreement and therefore could not be considered a remediless person." *Knight*, 761 F. Supp. at 621. He concluded that because the *Frampton* court's basis for creating the public policy exception was the fact that its plaintiff was a remediless employee-at-will, the same analysis would not apply where the plaintiff had an adequate remedy which had been collectively bargained for. *Id.* Unlike *Knight*, and more like the plaintiff in *Frampton*, Watson is not covered by a collective bargaining agreement which provides an alternative or equivalent remedy.

However, Costco still argues that Watson is not remediless because she has a remedy available under the ADA. While it is true that Watson has asserted a claim under the ADA, it is entirely possible that Watson's disability may not be severe enough for her to be covered by the ADA or some other prerequisite to recovery under that federal statute may not be met. Accordingly, even if Costco did purposefully deny her continued employment in the new position for which she interviewed, specifically because she filed a workers compensation claim, she would have no remedy if she were unable to establish unrelated ADA prerequisites

As secondary support for his decision in *Knight*, Judge Brooks stated that "the Indiana Supreme Court has clearly left the extension of the *Frampton* exception to the employment-at-will doctrine to the Indiana legislature." *Knight*, 761 F. Supp. at 621. The opinion further explained that if the doctrine is "to be extended, the expansion must

come from the Indiana judiciary or legislature." *Id.* In the situation at hand, under existing Indiana law, there would seem to be no extension needed. While Costco argues that Watson was not discharged, and therefore she is not entitled to a claim of retaliatory discharge, the Indiana courts already recognize constructive discharge. *See e.g., Ind. Civil Rights Comm'n v. Midwest Steel Div. of Nat'l Steel Corp.*, 450 N.E.2d 130 (Ind.App. 1983) (holding that the plaintiff was constructively discharged in a case alleging violations of Indiana civil rights laws).

Since *Frampton* makes it quite clear that an employer cannot terminate an employee for filing a workers compensation claim and the courts also recognize that termination can be constructive in nature, there is no expansion of the law in any substantive sense. This court does not see a distinction between an employer retaliating against an employee by the outright termination of her employment versus actions equivalent to a constructive discharge. It would be contradictory to find that work conditions so severe as to amount to a constructive discharge would not have as equal "a deleterious effect on the exercise of a statutory right" as an actual discharge. *Frampton*, 297 N.E.2d at 427. Indiana courts have carved out an exception to Indiana's employment-at-will doctrine in order to protect an otherwise remediless employee who files a workers compensation claim from retaliation and that exception applies to the present case for the very same reason.

IV. Conclusion

For the foregoing reasons, Defendant's Motion to Dismiss is **DENIED**.

ALL OF WHICH IS ENTERED this 29th day of July 2005.

John Daniel Tinder, Judge
United States District Court

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